

DELEGATE MARION: And if Congress were to enact a law establishing the maximum permissible deviation between the largest and the smallest district, and assuming they were to set the figure at fifteen percent, would it be your impression that that would take precedence over the ten percent figure, or would the fact that Maryland by its constitution required a tighter standard take precedence to that extent over the Federal law?

DELEGATE GALLAGHER: My understanding would be that Maryland's ten percent would fall and that the Congressional fifteen percent, the act of Congress, would become the law for Maryland as it would for the rest of the states of the union, even though it was more restrictive.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: Would there be anything in this section, for example the provision in the first line that the State shall be divided by law, which would in your judgment prevent a three-judge federal court, as it did a year or so ago, from drawing the districts, if they were not otherwise drawn by law in Maryland?

DELEGATE GALLAGHER: No, I believe that the General Assembly could fail to exercise its responsibility in a constitutional fashion, and that a set of circumstances might arise where a federal District Court would be forced, because of the exigencies of time, to attempt the redistricting itself, but I would hope that this would go a long way towards thrusting the ultimate responsibility on the General Assembly.

THE CHAIRMAN: Delegate Marion.

DELEGATE GALLAGHER: I might say that within two years after the *Westbury v. Sanders* case, 27 states acted to redistrict their Congressional areas virtually voluntarily. Maryland was only one of four which found that its ultimate discharge of responsibility had to be vested in the courts rather than in the General Assembly.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: But there is no authority in this section for the Court of Appeals of Maryland to assume the responsibility if the legislature fails to act. Would that be correct?

DELEGATE GALLAGHER: That is correct. We toyed with the idea of having the Court of Appeals do this, of conferring original jurisdiction on it, but we decided

there were so many problems that we did not want to get into federal-state conflicts. We did not feel that it would be wise to attempt to do that. Consequently, I would suspect that you could go either to the state courts or to the federal courts for relief. Probably the federal courts are the best avenue of relief for congressional districts. At least they are the most traveled.

THE CHAIRMAN: Delegate Boyer.

DELEGATE BOYER: Delegate Gallagher, the Ohio case to which you referred was probably *Lucas v. Rhodes*, was it not, in the Supreme Court?

DELEGATE GALLAGHER: Yes, sir.

DELEGATE BOYER: Which was decided, I believe, December 13—just recently.

DELEGATE GALLAGHER: That is correct.

DELEGATE BOYER: Could you tell us, please, what the reasoning of the court was in striking down the unofficial estimate used by the Ohio legislature in redistricting?

DELEGATE GALLAGHER: I will to the best of my ability.

As I said, the six judges who voted to strike down the decision of the special three-judge court did not file an opinion with their decision. There is a two-judge dissenting opinion which would indicate that there were two things wrong—possibly one of them being the 31 percent deviation from the mean, and the second the use of unofficial population estimates.

Reading from the decision of the majority below, they said: "In the 1964 Special Session of the Ohio Legislature which drafted the redistricting plan here under scrutiny, that body relied upon statistics supplied by several agencies throughout the State of Ohio in order to project population trends likely to result in equal redistricting by the time elections were held in 1966."

The problem there was they used Chamber of Commerce Figures, the Columbus Area Chamber of Commerce research staff for Franklin County; they used figures from the Ohio Department of Development, which I am not sure is an official agency of the State of Ohio; and they used figures from the Citizens' League for Cayoga County; so that the special three-judge court in Ohio relied at least very significantly upon